

ARIZONA VOICE FOR CRIME VICTIMS

Jessica Gattuso (AZ Bar # 025492)

Colleen Clase (AZ Bar # 029360)

Eric Aiken (AZ Bar # 032418)

P.O. Box 877906

Tempe, AZ 85287

(480) 600-2661

jgattuso@voiceforvictims.org

ARIZONA COALITION TO END

SEXUAL AND DOMESTIC VIOLENCE

Jamie Balson (AZ Bar #028587)

2800 N. Central Ave., Suite 1570

Phoenix, AZ 85004

(602) 279-2900

jamie@acesdv.org

ARIZONA SUPREME COURT

IN THE MATTER OF:

PETITION TO DELETE RULE 20,
TO ADD RULE 24.1 AND TO
RENUMBER RULES 24.1, 24.2,
24.3, AND 24.4, ARIZONA RULES
OF CRIMINAL PROCEDURE

Supreme Court No. R-16-0031

**COMMENT IN SUPPORT OF
PETITION TO DELETE RULE 20**

Pursuant to Rule 28(D), Rules of Supreme Court, Arizona Voice for Crime Victims (AVCV) and Arizona Coalition to End Sexual and Domestic Violence (ACESDV) respectfully submit this Comment in support of the Petition to Delete Rule 20, to Add Rule 24.1 and to Renumber Rules 24.1, 24.2, 24.3, and 24.4, Arizona Rules of Criminal Procedure filed by the Maricopa County Attorney's Office. This Comment is based on crime victims' rights to justice and due process.

AVCV, founded in 1996, is a non-profit organization located in Phoenix, Arizona that provides pro bono legal representation and social services to victims of crime in state and federal criminal proceedings. AVCV seeks to foster a fair and compassionate justice system in which all crime victims are informed of their rights under the laws of the United States and Arizona, fully understand their rights, and have a meaningful way to enforce their rights.

ACESDV is a nonprofit organization whose purpose is to increase public awareness of sexual and domestic violence, enhance the safety of and services for victims of sexual and domestic violence, and to end sexual and domestic violence in Arizona. ACESDV's mission to lead, advocate, educate, and collaborate to prevent and end sexual and domestic violence in Arizona is carried out through providing direct services to victims of sexual and domestic violence, providing education and training to law enforcement, social workers, and other professionals, by offering technical assistance to those who provide direct services to victims of sexual and domestic violence, by engaging in public policy advocacy on these important issues, and by collaborating with leaders, citizens, and communities to solve pressing issues facing victims of sexual and domestic violence. ACESDV has an interest in protecting the rights of crime victims which are guaranteed by the Victims' Bill of Rights (VBR), Arizona Constitution, art. II, § 2.1, the Arizona Revised Statutes, and the Arizona Rules of Criminal Procedure.

1 To preserve and protect justice and due process, a victim of a crime has a
2 right to be treated with fairness, respect, and dignity throughout the criminal justice
3 process. Ariz. Const. art. II, § 2.1(A)(1); *JD.; M.M. v. Hegyi (Deng)*, 236 Ariz. 39,
4 41, 335 P.3d 1118, 1120 (2014). To uphold victims’ constitutional rights to justice
5 and due process, fairness, respect and dignity demands that Rule 20 be deleted.
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8 Victims have a constitutional right “to have all rules governing criminal
9 procedure and the admissibility of evidence in all criminal proceedings protect
10 victims’ rights.” Ariz. Const. art. II, § 2.1(A)(11). This provision is mandatory
11 and applies to Rules 20 and 24 of the Arizona Rules of Criminal Procedure. Ariz.
12 Const. art. II, § 32.
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14 The current Rule 20(a) allows a trial judge on motion of a defendant or on its
15 own motion to direct a verdict of acquittal in a criminal case after the State has
16 rested if, in the court’s view, there is “no substantial evidence to warrant a
17 conviction.” Ariz. R. Crim. P. 20(a). The same applies to an aggravation hearing.
18 *Id.* Rule 20(b) provides that “[a] motion for judgment of acquittal made before
19 verdict may be renewed by a defendant within 10 days after the verdict was
20 returned.” Ariz. R. Crim. P. 20(b). Although a court can direct a verdict of
21 acquittal both before and after a jury’s verdict, only a post-verdict judgment of
22 acquittal can be appealed. *Evans v. Michigan*, 133 S.Ct. 1069, 1081, fn. 9, 185
23 L.Ed.2d 124 (2013); *State v. West*, 226 Ariz. 559, 562, 250 P.3d 1188, 1191
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1 (2011). Despite victims' rights to justice and due process, Rule 20(a) allows a trial
2 judge to take the case from the jury and permanently end the case without any
3 appellate review.

4 A.R.S. § 13-4032(7) allows the State to appeal "a judgment of
5 acquittal...that is entered after a verdict of guilt" and A.R.S. § 13-4437 allows a
6 victim "to file a notice of appearance in an appellate proceeding seeking to enforce
7 an rights or to challenge an order denying any right." The problem with a pre-
8 verdict judgment of acquittal is that neither the State nor the victim has an
9 opportunity to have that decision reviewed because of double jeopardy protections
10 for defendants, even if the acquittal is premised on an error. *Evans*, 133 S.Ct. at
11 1081 (mistaken pre-verdict acquittal bars retrial and appeal due to the Double
12 Jeopardy Clause). A rule that allows for a mistaken acquittal with no possibility of
13 appellate oversight serves no legitimate purpose that overcomes victims' rights to
14 justice and due process.

15 Deleting the current Rule 20 and amending Rule 24 to include only post-
16 verdict judgment of acquittals serves to protect victims' constitutional rights to
17 justice and due process. Additionally, taking away the option of mid-trial
18 acquittals reduces the possibility of secondary victimization. Secondary
19 victimization is the idea that victims are injured once by the crime and then a
20 second time by criminal justice authorities. Jo-Anne Wemmers, *Victims'*

1 *Experiences in the Criminal Justice System and Their Recovery From Crime,*
2 INT'L REV. OF VICTIMOLOGY 221, 221-22 (2013). Within the idea of secondary
3 victimization is the idea of procedural justice, which refers to the perceived
4 fairness of procedures.¹ Studies also appear to show that even when the desired
5 outcome is not fully achieved, satisfaction is positively correlated with a process
6 that is respectful and fair and favors victims' active participation. Judith Lewis
7 Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J.
8 OF TRAUMATIC STRESS 159, 160-61 (April 2003) (engagement in the legal system
9 may provide crime victims with public acknowledgement of their suffering and
10 restores the victims' trust in the community). A rule that allows a judge to grant a
11 mid-trial acquittal cuts short victims' participation in the justice system, risks
12 increased secondary victimization and perceptions of unfairness and thus impacts
13 victims' recovery.
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17 For the reasons set forth above, AVCV and ACESDV strongly support the
18 deletion of Rule 20 of the Arizona Rules of Criminal Procedure and amending
19 Rule 24 to include only post-verdict judgment of acquittals.
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24 ¹ Victims' procedural justice judgments are determined in part by the quality of
25 their interactions with authorities and in part by the quality of decision-making.
Research suggests that these judgments impact victims' recovery. *Id.*

Respectfully Submitted March 29, 2016
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By /s/ _____
Jessica Gattuso